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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,869	11/08/2001	Stewart Paton Granger	J6666(C)	6511

201 7590 07/29/2005

UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER	
JIANG, SHAOJIA A	
ART UNIT	**PAPER NUMBER**
1617	

DATE MAILED: 07/29/2005

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/007,869
Filing Date: November 08, 2001
Appellant(s): GRANGER ET AL.

Ellen Plotkin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 5, 2005.

HC

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of claimed subject matter

The summary of invention contained in the brief is substantially correct. However, the examiner disagrees with Appellant's statements "An unexpected result of the present invention is that compositions that do not contain retinoic acid behave analogously to treatment with retinoic acid (i.e. mimick), as if they did contain the most active form of retinoid, i.e., retinoic acid, while maintaining retinoid stability over time." (emphasis added, see the last paragraph at page 5 of Appellant's *Summary of Invention*);

"An unexpected result as shown in the Specification and Declaration is that the specified retinoid boosters, despite boosting the effect of specified retinoids on the skin,

tend to destabilize the specified retinoids in the composition." (emphasis added, see the 2nd paragraph at page 6 of Appellant's *Summary of Invention*).

It is noted that this statement is not referred to the specification by page and line number and Appellant's explanation of the data in Examples of the specification.

(6) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(7) Prior Art of Record

5,759,556	Burger et al.	06-1998
5,716,627	Granger et al.	02-1998
5,976,555	Liu et al.	11-1999
5,914,116	Surares et al.	06-1999

Remington's Pharmaceutical Sciences (1990), p 1511-1512.

(8) Grounds of Rejection to be Reviewed on Appeal.

Note that Appellant's declaration of Susanne Teklists Iobst (not inventor) under 37 CFR 1.132, filed May 5, 2004 after the date of filing a Notice Appeal and filed with the appeal brief (on the same date of filing the brief) will not be entered because there is not good and sufficient reasons why it was not presented earlier. Therefore, this declaration will not be discussed herein.

The following ground(s) of rejection(s) are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 4-7, 9-12, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burger et al. (5,759,556, of record) and Granger et al. (5,716,627, of record) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,914,116, of record), further in view of Remington's Pharmaceutical Sciences (1990, of record). This rejection is set forth in the prior Office Action mailed November 30, 2004, and reiterated below in full.

Burger et al. discloses a skin conditioning composition comprising a compound selected from retinol or retinyl ester in an amount from about 0.001% to about 10%, preferably in an amount from about 0.01% to about 0.5%, in combination with particular compounds such as the instant retinoid booster: alpha Ionones and Damascones (see particularly their structural formula at col.3-4 and col.2 line 41 to col.3 line 50, Example 6 at col.14) in an amount from about 0.0001% to about 50%; and a method of a skin condition selecting from the group consisting of dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin comprising applying topically to the skin the composition therein. See also abstract,. col. 5 lines 23-28, and claims 1-4. Burger et al. also discloses the composition therein further comprising the instant

emollients ranging from about 0.5-50% (see col.6 lines 23-56). Burger et al. further discloses that the skin care composition therein is stored in a suitable container to form a skin care product (see col.7 lines 20-42).

Granger et al. discloses skin conditioning compositions comprising a) retinol or retinyl ester in an amount from about 0.001% to about 10%, preferably in an amount from about 0.01% to about 1% (see particularly abstract, col.2 lines 31-40 and col.3 lines 34-39), b) an azole, most preferably climbazole (see particularly col.2 line 62, col.4 lines 19-27, col.12 Example 3 and col.14 Example 4) in an amount from about 0.001% to about 50%, preferably in an amount from about 0.001% to about 10%, and c) a fatty acid amide such as linoleoyl-DEA (also known as linoleamide DEA) in an amount from about 0.001% to about 50% (see particularly col.2 lines 36-38, col.12 Example 3 and col.14 Example 4), wherein at least two agents, an azole and the fatty acid amide, substantially improves the performance of retinol or a retinyl ester (see col.2 lines 47-50) and substantially increases the ability of either retinol or retinyl ester in skin benefit, resulting in a synergistic interaction between retinol or retinyl ester and fatty acid amides and azoles in treating skin conditions such as dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin (see col.2 lines 41-58); and a method of conditioning skin comprising applying topically to the skin the composition therein. See also claims 1-2 therein. Granger et al. further discloses that the skin care composition therein is stored in a suitable container to form a skin care product (see col.6 lines 24-25 and 33-35).

Burger et al. and Granger et al. do not expressly disclose the first compartment for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing alpha Ionone, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with alpha Ionone in the second composition. Granger et al. does not expressly disclose the employment of the particular fatty acid amide, Cocamide DEA, in the composition of prior art.

Liu et al. teaches that retinoids including retinol, retinyl ester and retinal in skin care compositions are known to be unstable, i.e., quickly losing their activity and either oxidize or isomerize to non-efficacious chemical forms. See col.2 lines 40-53. The retinoids can be stabilized against chemical degradation (see col.3 lines 22-25). Most importantly, Liu et al. teaches that several known stable compositions comprising retinol, retinyl ester and retinal for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use (see particularly col. 2 lines 54-61).

Surares et al. discloses that the first and second compositions are stored in respectively separate containers, being joined together (see abstract and Fig.1-2). One of separate compositions may comprise retinol, retinol esters, or retinoic acid, e.g. in Table 1 at col.3, the first composition for sunscreen in the first container whereas the second composition for anti-wrinkle comprising retinoids in the second container (see col.3 Table I and lines 61-64; col.4 lines 21-24 and 59-64, and col.8 Table III).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ two compartments for separately storing retinol or retinyl ester in a first composition and dimethyl imidazolidinone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen and other chemicals.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ two compartments for separately storing retinol or retinyl ester in a first composition and dimethyl imidazolidinone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen and other chemicals since retinoids including of retinol, retinyl ester and retinal in skin care compositions are known to be unstable because they quickly lose their activity by, for example, either being oxidized or isomerizing to non-efficacious chemical forms and chemical degradation according to Liu et al.

Moreover, several known stable compositions for skin care comprising retinoids are known to be supplied in two bottles or two portions (separating retinoids from other ingredients) to keep retinoids from chemical reactions with other ingredients (the first and second compositions are known to be stored in respectively separate compartments or containers, being joined together) and are mixed together just prior to use and, based on the teachings of Liu and Surares.

Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinol or retinyl ester in a first composition and alpha Ionone in the second composition to keep retinol or retinyl ester from reacting with

alpha Ionone in order to preserve the stability of retinol or retinyl ester in the compositions to avoid chemical degradation, and also to keep retinol or retinyl ester out of contact with oxygen to avoid being oxidized by oxygen in the air and some other locations; and keep retinoids from chemical reactions with other ingredients to avoid chemical degradation. Thus, the teachings of Liu in particular and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Additionally, one having ordinary skill in the art at the time the invention was made would have been motivated to employ the particular fatty acid amide, Cocamide DEA, in the skin compositions of Granger et al. since fatty acid amides are broadly known to be capable of substantially improving the performance of retinol or a retinyl ester in the skin care compositions and resulting in a synergistic interaction between retinol or retinyl ester and fatty acid amides and azoles in treating skin conditions such as dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin according to Granger et al. Cocamide DEA is a known and art-recognized fatty acid amide used in the skin composition, which is a coco fatty acid diethanolamide (having registry number 68603-42-9 of ACS, of recod). Thus, Cocamide DEA would have same or substantially similar usefulness or activity as linoleoyl-DEA (also known as linoleamide DEA) in skin care compositions, based on the reasonable expectation that structurally similar species usually have similar properties. See, e.g., Dillon, 919 F.2d at 693, 696, 16 USPQ2d at 1901, 1904. See also Deuel, 51 F.3d at 1558, 34 USPQ2d at 1214.

Additionally, above three cited references do not expressly disclose the first compartment made out of aluminum.

Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are widely used in pharmaceutical products for preserving the stability of many pharmaceuticals (see the bottom of the right column at page 1511 to the 1st paragraph of the left column at page 1512).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ an aluminum container as the first compartment for storing retinol or retinyl ester.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ an aluminum container as the first compartment for storing retinol or retinyl ester since Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals because one of ordinary skill in the art would clearly acknowledge that an aluminum container is stable, i.e., not reacting with many pharmaceuticals including retinol or retinyl ester in a normal storing condition and therefore is widely used as pharmaceutical containers (and/or food containers). Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well within the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science, involving merely routine skill in the art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 4-7, 9-12, and 14-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5,759,556 (Burger et al.) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record). This rejection is set forth in the prior Office Action mailed November 30, 2004, and reiterated in full below.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to a skin conditioning composition comprising a compound selected from retinol or retinyl ester in an amount from about 0.001% to about 10%, in combination with particular cyclic aliphatic unsaturated compound such as alpha Ionone in an amount from about 0.001% to about 10%; and methods of conditioning skin comprising applying topically to the skin the composition therein.

The claims of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters such as alpha Ionone; a first compartment for storing the first composition; and a second compartment for storing the second composition; the first and second compartments being joined together, and methods of conditioning skin employing the compositions herein.

The patent does not expressly disclose the first compartment made of aluminum for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing alpha Ionone, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

The same teachings of Liu et al. and Surares et al. and Remington's Pharmaceutical Sciences (1990) have been discussed above (see supra).

One having ordinary skill in the art at the time the invention was made would have been motivated to employ two compartments for separately storing retinol or retinyl ester in a first composition and alpha Ionone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen since retinoids including of retinol, retinyl ester and retinal in skin care compositions are known to be unstable

because they quickly lose their activity by either being oxidized or isomerizing to non-efficacious chemical forms according to Liu et al. Moreover, several known stable compositions for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use based the teachings of Liu and Surares. Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinol or retinyl ester in a first composition and retinoid booster, alpha Ionone, in the second composition to keep retinoids from reacting with dimethyl imidazolidinone in order preserve the stability of retinoid compositions, and also to keep retinol or retinyl ester out of contact with oxygen to avoid being oxidized by oxygen. Thus, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Additionally, one having ordinary skill in the art would have found it obvious to employ an aluminum container as the first compartment for storing retinol or retinyl ester since Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals. Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well in the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science, involving merely routine skill in the art.

Thus, the instant claims 1-2, 4-7, 9-12, and 14-18 are seen to be obvious over the claims 1-4 of U.S. Patent No. 5,759,556 in view of Liu et al. (5,976,555, of record)

and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Claims 1-2, 4-7, 9-12, and 14-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/008,067 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record). This rejection is set forth in the prior Office Action mailed November 30, 2004, and reiterated in full below.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application is drawn to a stable skin care composition containing a first composition comprising about 0.001% to about 10% of a retinoid; and about 0.0001% to about 50% of at least one retinoid booster; and a cosmetically acceptable vehicle, wherein the stable skin care composition is contained in a package so that the composition is out of contact with oxygen and the package made out of aluminum, and methods of conditioning skin employing the composition.

The claim of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters herein; a first compartment for storing the first composition; and a second compartment for

storing the second composition; the first and second compartments being joined together, and methods of conditioning skin employing the compositions herein. Thus, the instant compositions comprise about 0.001% to about 10% of a particular retinoid and about 0.0001% to about 50% of particular retinoid boosters herein.

The copending Application No. 10/00,067 does not expressly disclose the first compartment made of aluminum for storing retinol or retinyl ester, and the second compartment for storing at least one retinoid booster, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with retinoid booster in the second composition.

As discussed in the above obviousness-type double-patenting rejection (see above), as the same reason as above, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Thus, the instant claims 1-2, 4-7, 9-12, and 14-18 are seen to be obvious over the claims 1-5 of copending Application No. 10/00,067 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(9) Response to Argument

Claim Rejections - 35 USC § 103 Maintained

It is the examiner's position that the present invention is clearly obvious in view of the prior art of record. Appellant's arguments with respect to the prior art rejection made under 35 U.S.C. 103(a) as being unpatentable over the cited prior art of record have been fully considered but are not deemed persuasive as to the nonobviousness of the claimed invention over the prior art as discussed further below.

Appellant primarily argues that the instant claims are not obvious and the combination cited references does not arrive at the claimed invention herein. Appellant asserts:

"there is no teaching whatsoever in the secondary references that even remotely suggests the need or solution for stabilizing retinoid compositions in the presence of retinoid enhancing actives as described in the present invention. Moreover, there is no teaching whatsoever in the combination of references relied on by the Examiner that even remotely suggests that boosters destabilize retinoids to a greater degree than retinoids alone would be unstable, and therefore none of the references teach or suggest a solution, in particular, a dual compartment container made of aluminum as set forth in the claims." (see Appellant's brief, the last para. at page 12 to page 13).

First, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). See MPEP 2145.

In this case, contrary to Appellant's assertion, retinoids including retinol, retinyl ester and retinal in skin care compositions are known to be unstable, i.e., quickly losing their activity and either oxidize or isomerize to non-efficacious chemical forms and

chemical degradation; the retinoids composition can be stabilized against chemical degradation according to Liu et al. Most importantly, Liu et al. teaches that several stable compositions comprising retinol, retinyl ester and retinal for skin care are supplied in **two bottles or two portions** (separating retinoids from other ingredients) to keep retinoids from chemical reactions with other ingredients (the first and second compositions are known to be stored in respectively separate compartments or containers, being joined together) and are mixed together just prior to use and, according to Liu and Surares.

Note that Appellant admits and also asserts that

"Liu et al. at most merely restate the problem and fail to address the further instability contributed to retinoids by the presence of boosters. Liu et al. at most merely state an invitation to invent by restating that retinoids are unstable. Liu et al. do not address the problem to which the present invention is addressed, i.e., alleviating the additional instability contributed by boosters. (At most, Liu et al. provide a different solution - i.e. formulating in an emulsion with a specifically defined chemical stabilizer system, but all in one composition." "Although Liu et al. describe a container for storing the composition so that it is out of contact with oxygen, the container is described in combination with a retinoid composition with an emulsifier system and a co-emulsifier alone and does not protect the retinoid from degradation due to contact with retinoid boosters." (see Appellant's brief, the last para. at page 12 to page 13).

It must be recognized that any judgment on obviousness takes into account knowledge which was available and within the level of ordinary skill at the time the claimed invention was made. In re McLaughlin , 170 USPQ 209 (CCPA 1971). See MPEP 2145. Knowledge of those skilled in art and nature of problem solved provided

motivation and made obvious a combination of elements -- Princeton Biochemicals, Inc. v. Beckman Coulter, Inc. 04-1493 -- On June 9, 2005 recently, the Federal Circuit upheld a finding of obviousness of Princeton's capillary electrophoresis device, used to separate proteins and other matter. This court upheld that motivation to combine the elements came from the knowledge of those skilled in the art and the nature of the problem solved by the invention.

In this case, as pointed out above, Liu et al. teaches that retinoids including retinol, retinyl ester and retinal in skin care compositions are known to be **unstable**, i.e., quickly losing their activity and either oxidize or isomerize to non-efficacious chemical forms, and chemical degradation; the retinoids composition can be stabilized **against** chemical degradation. Thus, Liu et al. have provided the knowledge within the level of ordinary skill at or before the time the claimed invention was made and nature of problem solved with respect to the instability retinoids and the causes, oxygen and chemicals broadly. Hence, one of ordinary skill in the art would clearly recognize the instant retinoid boosters are chemicals which would be the cause for chemical degradation of retinoids.

Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinoids in a first composition and retinoid booster in the second composition to keep retinoids from reacting with its booster in order to preserve the stability of retinoids and avoid chemical degradation prior to use, and also to keep retinoids out of contact with oxygen to avoid being oxidized by oxygen in the air and some other locations.

More importantly, Liu et al. teaches that several known stable compositions comprising retinol, retinyl ester and retinal for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use.

Thus, the teachings of Liu in particular have also clearly provided the motivation to employ the separate compartments herein.

Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals because one of ordinary skill in the art would clearly acknowledge that an aluminum container is stable sufficiently, i.e., not reacting with many pharmaceuticals including retinol or retinyl ester in a normal storing condition and therefore is widely used as pharmaceutical containers (and/or food containers). Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well within the level of ordinary skill at the time the claimed invention was made and in the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science.

Regarding claim 16, Appellant repeats the same arguments (see the brief at page 15). These arguments are believed to be adequately addressed above.

Appellant also asserts that the specification and the declaration of Susanne Teklists lobst under 37 CFR 1.132 submitted before Final on July 30, 2004 under 37 CFR 1.132 have provided the unexpected results. Appellant's testing data in the

specification at pages 37-40 and in the declaration of Susanne Teklists lobst have been fully considered with respect to the nonobviousness and/or unexpected results of the claimed invention over the prior art but are not deemed persuasive.

First, the results on the tests of the employment of the agents improving the performance of retinol or a retinyl ester and substantially increasing the ability of either retinol or retinyl ester in skin benefit, shown in Example 1 in the specification applied to a person have been taught and suggested by Burger et al. and Granger et al., since, in particular, Granger et al. disclose that at least two agents, an azole and the fatty acid amide, substantially improves the performance of retinol or a retinyl ester (see col.2 lines 47-50) and substantially increases the ability of either retinol or retinyl ester in skin benefit, resulting in a synergistic interaction between retinol or retinyl ester and fatty acid amides and azoles in treating skin conditions such as dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin (see col.2 lines 41-58)

Second, Appellant's testing results show in the declaration of Susanne Teklists lobst under 37 CFR 1.132 filed before Final, that retinol stability is significantly diminished in the presence of boosters. Nonetheless, the testing results are not deemed unexpected based on the teachings of Liu et al. since one of ordinary skill in the art would clearly recognize and expect the instant retinoid boosters being chemicals would be the cause for chemical degradation of retinoids, as discussed above.

Therefore, all results presented in this case are clearly expected and not unexpected based on the cited prior art. Expected beneficial results are evidence of obviousness. See MPEP § 716.02(c). Therefore, the evidence presented in the

specification and the declaration of Susanne Teklists lobst is not seen to support the nonobviousness of the instant claimed invention over the prior art.

Therefore, motivation to combine the teachings of the prior art cited herein to make the present invention is clearly seen. The claimed invention is clearly obvious in view of the prior art.

For the above stated reasons, said claims are properly rejected under 35 U.S.C. 103(a). Thus, it is believed that the rejections should be sustained.

Respectfully submitted,

Shaojia Anna Jiang, Ph.D.
Primary Examiner
July 15, 2005

GARY KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Conferees

SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER